

EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA
3
4 UNITED STATES OF AMERICA,
5
6 Plaintiff,
7
8 and
9 OSAGE MINERALS COUNCIL,
10
11 Intervenor-Plaintiff,
12 vs. No. 14-CV-704-GFK-JFJ
13 OSAGE WIND, LLC; ENEL KANSAS,
14 LLC; and ENEL GREEN POWER
15 NORTH AMERICA,
16
17 Defendants.
18
19 VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF BILL MOSKALUK
20 TAKEN ON BEHALF OF THE PLAINTIFF
21 ON JUNE 16, 2021 AT 10:00 A.M.

14 APPEARANCES

15 On behalf of the PLAINTIFF:
Stuart Ashworth
16 Cathryn D. McClanahan
Nolan Fields
17 UNITED STATES ATTORNEY'S OFFICE
Northern District of Oklahoma
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19 918.382.2700
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21 (Appearances continued on the following page)

22 ALSO PRESENT: Megan Beauregard, Michelle Hammock, &
23 Christina Watson

24 VIDEOTAPED BY: Megan Smith

25 REPORTED BY: Abby Rhodes, CSR, RPR

1	APPEARANCES CONTINUED	Page 2	1	Exhibit	Description	Page	Page 4
2	On behalf of the INTERVENOR-PLAINTIFF:		2	62	Project Option/Change Order	89	
3	Mary Katherine Nagle		3	63	5/22/15 E-mail Chain	99	
4	Shoney Blake		4	64	October 2014 E-mail Chain	106	
5	PIPESTEM & NAGLE		5	65	10/14/14 E-mail Chain	113	
6	401 South Boston Avenue, Suite 2200		6	66	6/26/14 Meeting Notes	150	
7	Tulsa, Oklahoma 74103		7	67	September 2014 E-mail Chain	162	
8	918.936.4705		8	68	September 2014 E-mail Chain	164	
9	mknagle@pipestemlaw.com		9	69	Defendants' Fifth Amended and	171	
10	On behalf of the DEFENDANT:		10		Supplemental Privilege Log		
11	Ryan Ray		11	70	Project Short Views Update 10/17/14	174	
12	NORMAN, WOHLGEMUTH, CHANDLER, JETER, BARNETT & RAY		12				
13	401 South Boston Avenue		13				
14	2900 Mid-Continent Tower		14				
15	Tulsa, Oklahoma 74103		15				
16	918.583.7571		16				
17	Sarah M. Stevenson		17				
18	Lynn Slade		18				
19	MODRALL, SPERLING, ROEHL, HARRIS & SISK		19				
20	500 Fourth Street NW, Suite 1000		20				
21	Albuquerque, New Mexico 87103		21				
22	505.848.1800		22				
23	sarah.stevenson@modrall.com		23				
24			24				
25			25				
1	INDEX	Page 3	1	VIDEOGRAPHER: This is the videotape			Page 5
2	Page		2	deposition of Bill Moskaluk in the matter of the			
3	BILL MOSKALUK	6	3	United States of America and Osage Minerals Council			
4	Direct Examination by Mr. Ashworth	6	4	versus Osage Wind, et al., filed in the United States			
5	Cross Examination by Ms. Nagle	127	5	District Court for the Northern District of Oklahoma,			
6	Redirect Examination by Mr. Ashworth	179	6	Case No. 14-CV-704-GFK-JFJ. We're on the record at			
7	EXHIBITS		7	10:00 a.m. on June 16, 2021. Will counsel please			
8	Exhibit Description		8	state their names for the record.			
9	8 5/15/14 E-mail	144	9	THE WITNESS: William Moskaluk.			
10	37 5/22/14 E-mail Chain	140	10	MR. ASHWORTH: Stuart Ashworth with the U.S.			
11	38 10/9/14 Letter from the Bureau of	114	11	Attorney's Office. I also have Cathy McClanahan and			
12	Indian Affairs		12	Nolan Fields, attorneys in the case, as well as			
13	46 Exhibit B(i) Scope of Work	75	13	Michelle Hammock and Christina Watson who are			
14	48 Organizational Procedure No. 80	98	14	paralegals with the U.S. Attorney's Office. And we			
15	52 Contract Between Osage Wind LLC &	177	15	represent the U.S.			
16	IEA Renewable Energy Inc.		16	MS. NAGLE: Mary Katherine Nagle with			
17	53 7/9/14 Email Chain	147	17	Pipestem & Nagle. I represent the			
18	55 September 2014 E-mail Chain	156	18	intervener-plaintiff, the Osage Minerals Council, and			
19	56 September 2014 E-mail chain	159	19	with me today is my colleague Shoney Blake.			
20	59 Bill Moskaluk's LinkedIn Page	17	20	MR. RAY: Ryan Ray for the defendants. I			
21	60 Defendants' Response to Plaintiff's	24	21	believe also on call for the defendants is Lynn Slade			
22	Motion for Preliminary Injunction		22	and Sarah Stevenson. Counsel Megan Beauregard is			
23	61 Osage Wind Project Alignment Meeting	37	23	observing.			
24	Agenda 9/9/14		24	VIDEOGRAPHER: Okay. Will the reporter now			
25	EXHIBITS (Continued)		25	swear in the witness.			

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1 agreement with what your understanding was at the
 2 time, in the summer of 2014?
 3 A Yes, I agree with it.
 4 Q Okay. And -- okay. Great.
 5 Do you -- do you know whether the original
 6 scope was for the IEA team to be allowed to mine on
 7 site as -- as Ron states here?
 8 A No, I don't.
 9 Q Okay. But it is your understanding that
 10 originally the plan was for them to fill the -- the
 11 back -- use backfill from the construction site on the
 12 wind farm; is that correct?
 13 A Yes.
 14 Q Do you recall at any point in time, was
 15 there a decision ever made to start importing the
 16 backfill instead and purchasing those materials off
 17 site?
 18 A I don't recall that.
 19 Q Okay.
 20 A No, wait a second. I think there was the
 21 opportunity for everybody to put together a cost
 22 estimate, but to my knowledge, it didn't go any
 23 further.
 24 Q Okay. Do you recall reviewing the cost
 25 estimate?

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1 A No, I don't.
 2 Q Okay. Did anyone ask you to assist in
 3 preparing the cost estimate?
 4 A Yes, Giuseppe had asked me. Hold on now.
 5 I'm not sure what it was, what estimate I did. I
 6 think it was on manhours or something of that nature,
 7 not -- not materials.
 8 Q Okay. And would that have been -- well, let
 9 me -- let me actually ask this way:
 10 If you -- if -- if EGPNA and IEA had had to
 11 import backfill for the wind farm off site onto the
 12 site, would that have increased the number of hours
 13 of -- in terms of just manpower and labor to do that?
 14 A I'm not really sure. If it was -- if it was
 15 in the contract originally, there wouldn't be any
 16 additional cost factors in it so...
 17 Q Mmm-hmm.
 18 A I'm unsure.
 19 Q Okay. All right. Let me move on to another
 20 exhibit, and this was previously entered as Exhibit 55
 21 in another deposition, and -- and so -- okay. Here we
 22 go. So let's see here, this looks like it is dated --
 23 well, first of all, I will say this is -- this is
 24 Exhibit 55. It's Bates stamped Osage Wind-019901 and
 25 it looks like at the bottom here we've got an e-mail

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1 from Craig Mazurowski to you, CCing Chris Hanson and
 2 Ron Ritter, dated September 2, 2014, Craig writes
 3 "Bill, in the past we have had a couple conversations
 4 regarding crushing rock on site. It is my
 5 understanding that Enel/Tradewinds does not want any
 6 crushing on site due to mineral right issues. Please
 7 confirm. Thanks."
 8 And you write back "Craig, let's discuss
 9 this a.m. Bill."
 10 Do you recall this e-mail exchange in
 11 September of 2014 with Craig Mazurowski?
 12 (Exhibit 55 Marked for Identification)
 13 A Vaguely, but I do remember -- whatever the
 14 outcome was, I -- I can't really remember, but I
 15 vaguely remember this e-mail, yes.
 16 Q Okay. Do you recall much -- well, do you
 17 know first -- did you end up having this conversation
 18 with Craig?
 19 A I'm not even certain about that either.
 20 Q Okay. That's fine. I -- I know it was a
 21 long time ago.
 22 When he writes "In the past we've had a
 23 couple conversations regarding crushing rock on site,"
 24 do you -- do you recall what those conversations were
 25 about specifically?

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1 A No.
 2 Q Okay. He also writes "It is my
 3 understanding that Enel/Tradewinds does not want any
 4 crushing on site due to mineral -- mineral right
 5 issues."
 6 Do you recall anyone from Enel or Tradewind
 7 saying something to you along those lines?
 8 A They might have said something to Craig.
 9 That -- that, I don't know.
 10 Q Okay. Do you recall anyone like Bill Price
 11 or Steve Champagne ever mentioning to you that there
 12 should not be crushing on site due to mineral right
 13 issues?
 14 A No.
 15 Q Okay. So you -- you really don't recall
 16 ever kind of hearing any messaging around we need to
 17 stop crushing due to mineral right issues?
 18 A No.
 19 Q And it is true that actually crushing
 20 continued after September 3, 2014, on the Osage Wind
 21 farm; is that correct?
 22 A Yes.
 23 Q Okay. Do you recall whether the Bureau of
 24 Indian Affairs ever communicated to EGPNA that
 25 crushing minerals on the Osage Wind farm would require

<p style="text-align: right;">Page 158</p> <p>1 a lease or permit?</p> <p>2 A In that letter that was presented to me, I</p> <p>3 believe that's when they told Enel or whomever and</p> <p>4 that was a sandy soil permit.</p> <p>5 Q Okay. And do you recall reviewing that</p> <p>6 letter when -- when it was received by EGPNA?</p> <p>7 A No, I -- I read it briefly and passed it on</p> <p>8 to Giuseppe DiMarzio and also Bill Price.</p> <p>9 Q Okay. And did they, after that, ask you to</p> <p>10 tell IEA to cease construction while they reviewed the</p> <p>11 letter or considered the legal issues, or were you</p> <p>12 ever asked to even pause on construction?</p> <p>13 A No.</p> <p>14 Q Did they inform you at that time that there</p> <p>15 would be no need to pause on construction because they</p> <p>16 had a legal memorandum that -- that explained that the</p> <p>17 BIA was wrong?</p> <p>18 A No.</p> <p>19 Q Okay. So let's -- I'm going to -- we</p> <p>20 don't -- I don't think we need to look at this</p> <p>21 document anymore. I'm actually going to show you</p> <p>22 another document. Here we go. Okay. And this one</p> <p>23 was previously entered as Exhibit 56. Here's its</p> <p>24 stamp and it's -- it's Bates stamped Osage</p> <p>25 Wind-018666. And this looks like an e-mail to -- from</p>	<p style="text-align: right;">Page 160</p> <p>1 Q Mmm-hmm.</p> <p>2 A And you shoot your foundations so it's just</p> <p>3 a construction term that we use.</p> <p>4 Q Mmm-hmm. Mmm-hmm. Mmm-hmm.</p> <p>5 I note here that -- and -- and -- and so was</p> <p>6 some of that not a part of the initial plan or design</p> <p>7 or it wasn't fully anticipated when you commenced</p> <p>8 construction?</p> <p>9 A Yeah, it was -- it was not -- it was not</p> <p>10 part of the plan initially and, like I said, all of us</p> <p>11 were under the impression that the geotech report was</p> <p>12 true in its findings of the types of soil, but it</p> <p>13 wasn't -- it didn't even reflect the correct soils</p> <p>14 that were in there so somebody got mixed up.</p> <p>15 Q I see.</p> <p>16 And you write here as of September 16</p> <p>17 "Falling behind with excavations due to rock."</p> <p>18 A Yes.</p> <p>19 Q At current -- do you know how far behind you</p> <p>20 would have been from the projected schedule at that</p> <p>21 time?</p> <p>22 A One or two of the foundations, I believe,</p> <p>23 were at -- at risk. We had to complete them at a</p> <p>24 certain time for GE to bring their turbines in, and</p> <p>25 that's what we based -- that's what they based the</p>
<p style="text-align: right;">Page 159</p> <p>1 you to Giuseppe, dated September 16, 2014.</p> <p>2 Do you happen to recall this e-mail? I'll</p> <p>3 give you a chance to look at it.</p> <p>4 (Exhibit 56 Marked for Identification)</p> <p>5 A It's basically giving Giuseppe an update on</p> <p>6 where we were at. It was like a daily report.</p> <p>7 Report.</p> <p>8 Q And was Giuseppe your direct supervisor or</p> <p>9 would that be more Bill Price or was it a combo of</p> <p>10 both?</p> <p>11 A More of a Bill Price.</p> <p>12 Q Okay. So I note here that you write</p> <p>13 "Running into rock conditions affecting the</p> <p>14 operation."</p> <p>15 What exactly did you mean by that?</p> <p>16 A Means I couldn't dig the hole.</p> <p>17 Q Okay. And so I note that sort of in this --</p> <p>18 this e-mail you mention having to -- let me see if</p> <p>19 I -- you know, those areas will be charged and shot.</p> <p>20 What -- what does it mean to -- and I may</p> <p>21 not get the lingo right, to -- to charge those areas</p> <p>22 or to shoot them, what is that referring to?</p> <p>23 A It's referring to the dyn -- dynamite charge</p> <p>24 that you put in the drilled hole and then you</p> <p>25 basically set it off.</p>	<p style="text-align: right;">Page 161</p> <p>1 initial schedule on, was the delivery of turbines. I</p> <p>2 had to have some place to put them.</p> <p>3 Q Mmm-hmm.</p> <p>4 A Without any -- you know, without any</p> <p>5 construction activity going around.</p> <p>6 Q Right. Okay.</p> <p>7 And you write here "At current rate, I don't</p> <p>8 know if they can meet GE delivery time frames."</p> <p>9 So is it correct to say that at that point</p> <p>10 in time, in mid September, if there were any further</p> <p>11 delays or pauses on construction, Enel would not be</p> <p>12 able to meet GE's delivery time frame? Is that</p> <p>13 correct?</p> <p>14 A Yeah, they couldn't figure out what we were</p> <p>15 going to do at the time, and that was just a little</p> <p>16 nudge on my part to have them make a decision on which</p> <p>17 way to go.</p> <p>18 Q Did they ever get back to you in response to</p> <p>19 this with a decision?</p> <p>20 A I'm not really sure.</p> <p>21 Q Okay. All right. I think -- I think that</p> <p>22 is enough with this document and so I am going to now</p> <p>23 move on to another document. Here we go. And I</p> <p>24 believe this one has not yet been introduced so this</p> <p>25 is going to be Exhibit 67 and it is Bates stamped</p>